Supreme Court, U.S.
FILED

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No. _____

In the Supreme Court of the United States
October Term, 1997

COLERAIN HILLS INVESTMENT CO.,

Petitioner,

v.

BOARD OF REVISION OF HAMILTON COUNTY; NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION; DUSTY RHODES, AUDITOR OF HAMILTON COUNTY,

Respondents.

ON MEMORANDUM OF JURISDICTION
TO THE OHIO SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

FIRST QUESTION PRESENTED FOR REVIEW:

Whether Ohio Revised Code § 5717.05, as interpreted by the Ohio Supreme Court, violates the Due Process Clause of the United States Constitution.

SECOND QUESTION PRESENTED FOR REVIEW:

Whether Ohio Revised Code §5717.05, as interpreted by the Ohio Supreme Court, violates the Equal Protection Clause of the United States Constitution.

PARTIES TO THE PROCEEDING

1) COLERAIN HILLS INVESTMENT CO.

2) BOARD OF REVISION OF HAMILTON COUNTY

3) NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION

4) DUSTY RHODES, AUDITOR OF HAMILTON COUNTY

5) BETTY MONTGOMERY, OHIO ATTORNEY GENERAL (pursuant to 28 U.S.C. §2403(b), which may be applicable in that this appeal questions the constitutionality of Ohio Revised Code §5717.05)

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I. Official/ Unofficial Reports of Opinions delivered in the Case

A Magistrate's Decision was entered on May 21, 1996, wherein the Magistrate granted Appellees' motion to dismiss Appellant's amended complaint. See Appendix. The Court of Common Pleas for Hamilton County, Ohio entered a Final Judgment Entry on November 13, 1996, which upheld the Magistrate's Decision to dismiss. See Appendix. The Court of Appeals for the First District, Hamilton County, Ohio, entered a Judgment Entry on July 30, 1997 which affirmed the decision by the Court of Common Pleas. See Appendix. The Supreme Court of Ohio filed an Entry on November 12, 1997, wherein it dismissed the appeal as not involving a substantial constitutional question. See Appendix.

II. Basis of Supreme Court Jurisdiction

On September 12, 1997, Appellant Colerain Hills Investment Company timely filed a Notice of Appeal and Memorandum of Jurisdiction in the Ohio Supreme Court relating to this case. On November 12, 1997, the Supreme Court of Ohio entered a Final Judgment wherein said appeal was dismissed as one not involving a substantial constitutional question. Appellant maintains that its appeal does involve an important question of Federal law which has not been settled by this Court, and thus, pursuant to 28 U.S.C.S. § 1254(1), the Supreme Court of the United States possesses jurisdiction to hear Appellant's Petition for Writ of Certiorari.

III. Constitutional Provisions and Statutes involved in the case

U.S. Const. Am. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or Public Danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Am XIV, section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state

shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ohio Revised Code, Section 5717.05

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IV. STATEMENT OF THE CASE

A. PROCEDURAL POSTURE

The underlying action is an appeal of the final determination by the Hamilton County Board of Revision of the value of Appellant's property. Colerain Hills Investment Co. owns property upon which is situated a shopping center and a Ford dealership. The Hamilton

County Auditor in his evaluation of the total worth of the property grossly over-estimated the worth of the dealership and shopping center, for which reason the owner appealed the evaluation.

The Appellant in this case filed a complaint with the Hamilton County Board of Revision (hereinafter "BOR") contesting value of his property as appraised by the County Auditor. Rather than reduce the appraisal by the County Auditor, the Hamilton County BOR instead increased the fair market value of the shopping center and the Ford Dealership beyond the value placed upon it by the Hamilton County Auditor, beyond the value placed upon it by the Appellant's appraiser and the only MAI to testify, and well beyond the value placed upon it by the Northwest Local School Board's appraiser, based upon no evidence or logic.

The owner timely appealed the decision of the BOR to the Court of Common Pleas under Ohio Rev. Code § 5717.05, electing not to appeal to the Board of Tax Appeals under Ohio Rev. Code § 5717.01. In doing so, Appellant erroneously named the Cincinnati School District as a Defendant in the appeal, instead of the Northwest Local School District Board of Education. After this error, the Appellee Hamilton County Auditor filed a Motion to Dismiss for failure to name a necessary party. The Appellant promptly filed a First Amended Notice of Appeal naming the Northwest Local School District Board of Education, thus attempting to cure the earlier defect. Appellee Hamilton County Auditor filed a Motion to Dismiss the Amended Notice of Appeal.

The issue went to Magistrate Judge Bernat and was thoroughly briefed. Claiming to follow

the Ohio Supreme's Court's decision in Huber Heights Circuit Courts, Ltd. v. Carne, et al., 74 Ohio St.3d 306, 658 N.E.2d 744, (1996)(see Appendix), the Magistrate Judge granted the Motion to Dismiss, stating that the requirements of Ohio Rev. Code § 5717.05 are jurisdictional and cannot be cured. See Appendix. The Appellant objected to the Magistrate's Decision and the objection was heard by the Honorable Thomas Nurre upon the Briefs and Supplemental Authorities, who entered a Final Judgment Entry Affirming the Magistrate's Decision. See Appendix.

Appellant thereafter filed an appeal to the Court of Appeals of Ohio, First Appellate District, wherein Appellant challenged the constitutionality of O.R.C. §5717.05 as interpreted on due process and equal protection grounds. See Appendix. In its Judgment Entry

dated July 30, 1997, the Court of Appeals affirmed the lower court's decision. While acknowledging that the result "seemed harsh", the Court of Appeals stated that it was bound by the precedent of Huber which required it to affirm the dismissal of the appeal. See Appendix.

Appellant subsequently filed a Notice of Appeal and Memorandum of Jurisdiction to the Ohio Supreme Court, again arguing that the decision to dismiss and the law upon which such decision was based was unconstitutional, in violation of Appellant's right to due process and equal protection of the laws. In its final judgment entry of November 12, 1997, the Ohio Supreme Court dismissed the appeal as one not involving a substantial constitutional question. The Appellant now petitions this Court for a Writ of Certiorari in order to

argue the constitutional issues raised by the dismissal of its appeal.

V. ARGUMENT

Introduction

In Ohio, property owners who disagree with their county's tax valuation of their real property may contest said appraisal before the Board of Revision. The Board of Revision (hereinafter "BOR")is an administrative agency, made up of officials from the Department of Taxation. Ohio Rev. Code. Ann. §5715.02 (Anderson, 1996). The BOR hears evidence from both the county officials and the property owner, and makes a factual determination as to the tax valuation of the property.

Ohio Revised Code Section 5717.05 provides a judicial means for an aggrieved taxpayer to challenge a determination of a County Board of Revision with respect to this

valuation of real property. Specifically, § 5717.05 allows a taxpayer to prosecute an appeal in the Court of Common Pleas, in the county where the subject parcel is situated. Ohio Rev. Code. Ann. § 5717.05 (Anderson, 1996). Pursuant to O.R.C. § 5717.05, the Court of Common Pleas may review the facts on record before the BOR or conduct its own hearing on the facts, to determine the true value of the taxpayer's property.

Ohio Revised Code §5717.05 provides that an appeal to the Court of Common Pleas shall be taken by the filing of a notice of appeal, which must name the county auditor and all parties to the proceeding before the board. The Ohio Supreme Court in Huber interpreted these requirement to be jurisdictional, rather than procedural. 74 Ohio St.3d at 308, 658 N.E.2d at 745. Any errors in the Notice of

Appeal were deemed incurable, and thus foreclosed the possibility for a taxpayer to have judicial review of the decision by the BOR, an administrative agency. Id.

As an alternative to having an appeal heard in the Court of Common Pleas, however, an aggrieved taxpayer may instead opt to have his appeal heard before the Board of Tax Appeals, pursuant to Ohio Rev. Code § 5717.01. The Board of Tax Appeals (hereinafter "BTA") is another administrative agency of the Department of Taxation, which is situated in Columbus, Ohio. Ohio Rev. Code. Ann. § § 5717.01, 5703.03. (Anderson, 1996). An appeal to the BTA, however, will not be dismissed for minor, easily-corrected errors in the Notice of Appeal. Therefore, taxpayer appeals from determinations of both the Board of Tax Appeals and the Court of Common Pleas in tax valuation

matters are heard by the Court of Appeals in the District where the subject parcel is situated.

The Appellant has been denied a forum for an appeal and a day in court to contest this incomprehensible result by the Board of Revision, due to the current interpretation of Ohio Revised Code § 5717.05, which governs appeals to the Court of Common Pleas.

1. **Whether Ohio Revised Code Section 5717.05 violates the Due Process Clause of the United States Constitution**

The Due Process Clause of the Fifth Amendment of the United States Constitution, as it applies to the states via the Fourteenth Amendment, states that 'No person ... shall be deprived of life, liberty, or property, with due process of law....' U.S. Const. amend. V, XIV. As it has been interpreted, the Due

Process clause contains two components, one substantive and one procedural. Herrera v. Collins, 506 U.S. 390, 435-436, 113 S. Ct. 853, 879 (1993)(DISSENT Blackmun). Substantive due process prohibits certain government behaviors which are shocking to the conscience or which violate rights inherent in a concept of ordered justice and liberty. See; Moore v. East Cleveland, 431 U.S. 494, 503, 97 S.Ct. 1932, 1937 (1977) (plurality opinion); Rochin v. California, 342 U.S. 165, 172, 72 S.Ct. 205, 209, 96 L.Ed. 183 (1952).

Procedural due process, however, requires the government to provide its citizens with the proper procedural safeguards before depriving them of property or liberty. United States v. Salerno, 481 U.S. 739, 746, 107 S.Ct. 2095, 2101, 95 L.Ed.2d 697 (1987); Matthews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903,

47 L.Ed.2d 18, (1976). Usually, this includes the right to notice of the proposed deprivation and a meaningful hearing thereon. United States v. James Daniel Good Real Property, et al., 510 U.S. 43, 53, 114 S.Ct 492, 500 (1993).

The Court set forth a three-part test in Matthews v. Eldridge to determine whether the procedures surrounding a governmental taking of property satisfied the requirements of the Due Process Clause. 424 U.S. at 335, 96 S.Ct. at 903. First, one must consider the private interest affected by the government's actions. Id. Then, the court must consider the risk of erroneous deprivation of said private interest that the current government procedures pose. Id. Finally, the government's interest in preventing additional procedural requirements must also be weighed against the other factors. Id. In the present case, the government

has effectuated a taking of the Appellant's property by its taxation of Appellant's property. This taking violated the Appellant's right to due process of law, because Appellant was denied the opportunity to be heard before a court of law, due to a minor, easily-corrected error in pleading. Although Appellant was afforded a hearing before BOR, this hearing was inadequate. It is well established in Ohio that where matters usually recognized as of judicial cognizance are determined by administrative agencies, such matters must necessarily be appealable to some court. Clermont National Bank v. Edwards, 27 Ohio App.2d 91, 102, 273 N.E.2d 783, 789 (1970)(Quasi-judicial decisions and orders of administrative officers and agencies require review). It is clear that the County Board of Revision exercises quasi-judicial functions,

thereby necessitating judicial review of their decisions. State ex rel Toledo Trust Co. v. Fox, 39 Ohio App. 465, 467-468, 177 N.E. 652, 653 (1931)(County board of revision is a quasi-judicial body with specific and limited judicial powers and duties). Thus Appellant's administrative hearing before the BOR did not comply with the demands of procedural due process.

Appellant was denied its rights to procedural Due Process pursuant to the three-prong Matthews v. Eldridge test as well. Clearly, Appellant and others similarly-situated have a strong private interest in the tax evaluation. The assessment of Appellant's real estate determines the amount of property tax paid by Appellant. Without the opportunity for review of the evaluation by a detached, neutral body such as the court of common pleas,

there is a risk for erroneous evaluation. The state's interest in precluding judicial review where the pleadings contain technical errors is minimal. Therefore, procedural due process demands that Appellant be afforded an opportunity for judicial review pursuant to O.R.C. §5717.05, despite Appellant's failure to name the proper school board as a party to the action.

For all of the aforementioned reasons, the current interpretation of Ohio Rev. Code § 5717.05, as decided by the Ohio Supreme Court in Huber and adopted by the Court of Appeals in the present case, i.e., that the failure to initially name the Northwest Local School District as an appellee is a jurisdictional defect and incapable of cure, deprives the taxpayer of the procedural due process

guaranteed by the Fifth and Fourteenth Amendments of the U.S. Constitution.

2. Whether Ohio Revised Code Section 5717.05 as violates the Equal Protection Clause of the United States Constitution

The Fourteenth Amendment to the Constitution of the United States, adopted in 1868, states clearly:

> No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* (Emphasis ours).

U.S. Const. amend. XIV, § 1.

As it has been interpreted by the Supreme Court, the Equal Protection clause of the Fourteenth Amendment guarantees that the government will treat similar people in a similar manner. See, e.g. Hartford Steam Boiler Inspection and Insurance Co. v. Harrison, 301 U.S. 459, 57 S.Ct. 838 (1937). A state government may create classes of individuals for whom certain laws and rights may apply, as long as those classifications serve a purpose. If, however, a state creates a class of individuals who receive different treatment from other similarly-situated individuals, and there is no reason for the differing treatment, the state violates the equal protection clause of the Fourteenth Amendment. See, e.g. Hartford, Supra; See also, generally Sutton v. Mt. Sinai Medical Center, 102 Ohio App. 3d 641, 657 N.E. 2d

808(1995); Sorrell v. Thevenir, 69 Ohio St. 3d 415, 633 N.E.2d 504 (1994); Borden Farm Products Co. v. Baldwin, 293 U.S. 194, 55 S.Ct. 187 (1934); Craig v. Boren, 429 U.S. 190, 97 S.Ct. 451 (1976); Lindsey v. Normet, 405 U.S. 56, 92 S.Ct. 862 (1972); Maynard v. B.F. Goodrich Co., 144 Ohio St. 22, 56 N.E.2d 195 (1944); Gallagher v. State, 274 Ind. 235, 410 N.E.2d 1290 (1980); Hocking Valley Coal Co. v. Rosser, 53 Ohio St. 12, 41 N.E. 263 (1895).

When the Supreme Court reviews a state law claimed to be in violation of the equal protection clause, it employs differing standards of review. State classifications which do not involve a fundamental right or a suspect class are generally reviewed pursuant to a "rational basis" test. See, e.g., Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148 (1982). Under this lenient standard, a

statute will be upheld as long as the classification has a rational relationship to a legitimate, articulated government interest. See, e.g. McGinnis v. Royster, 410 U.S. 263 (1973). Although the classification enjoys a strong presumption of validity under this standard of review, purely arbitrary classifications are forbidden. See, e.g. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

Where a state statute involves a fundamental right or suspect class, however, the Court will review the classification under a "strict scrutiny" standard. Clark v. Jeter, 486 U.S. 456, 461, 108 S.Ct. 1910, 1914, 100 L.Ed.2d 465 (1988). Unless the classification is narrowly tailored to serve a compelling government interest, the classification will be

struck down as violative of the Equal Protection clause.

In the present case, the current interpretation of O.R.C. §5717.05 creates a two-part classification of persons seeking review of decisions by the BOR. This classification is based forum-selection, on whether the appeal is heard judicially or administratively: Individuals choosing the O.R.C. § 5717.01 appeals route may have their appeal heard despite errors in pleading; Individuals choosing the O.R.C. § 5717.05 route of appeals, however, will have the appeal dismissed for failure to join the proper school board as a party. In Ohio, therefore, O.R.C. §5717.05 denies appellants the right to appeal based solely on the forum chosen.

The forum-selection classification of O.R.C. § 5717.05 discriminates against those

appellants choosing the court of common pleas to review the decision by the BOR. The statute relegates those appellants to a second-class status, where the slightest errors in pleading can completely deny one's right to review of a BOR decision. The "first-class" citizens choosing the administrative appeal route provided by O.R.C. §5717.01, however, are afforded more leniency. Their errors in pleading will not preclude their opportunity to receive review of the decision by the BOR. The current interpretation of O.R.C. §5717.05, then, creates a system which discourages and punishes those who seek refuge in the judicial system, and favors those who rely solely on administrative agencies for review.

This classification involves issues at the very heart of our political system; namely, the separation of powers. This Court has time

and again, "reaffirmed the importance of our constitutional scheme of the separation of governmental powers into the three coordinate branches. Metropolitan Washington Airports Authority v. Citisens for the Abatement of Aircraft Noise, Inc., 501 U.S. 252, 272, 111 S.Ct. 2298, 2310 (1991)(citing Morrison v. Olson, 487 U.S. 654, 693, 108 S.Ct. 2597, 2620, 101 L.Ed.2d 569 (1988)). The Court has invalidated laws which violate this most basic principle. Id.

The BOR and BTA are administrative agencies established and controlled by the executive branch of state government, although they perform quasi-judicial functions. When the BOR decisions are reviewed by the BTA rather than the court of common pleas, the same entities which makes the tax appraisals are also determining the legality and

appropriateness of those appraisals. The current classification of O.R.C. §5771.05 which favors administrative review over judicial review undermines the checks and balances which are an integral part of our three-prong system of government. Because the classification of tax appellants under O.R.C. §5717.05 affects a fundamental concept of ordered liberty like the separation of powers, the classification should be reviewed under a higher level of scrutiny than rational review. The classification of O.R.C. §5717.05 should be struck down under a strict scrutiny standard of review. Any interest Ohio has in controlling the jurisdiction and procedures of its state courts is hardly a compelling governmental interest. Therefore, the important public interest in obtaining judicial review should prevail.

In the alternative, O.R.C. §5717.05 may be reviewed under a rational basis standard of review. Even under this lower standard of review, O.R.C. §5717.05 as it is interpreted is unconstitutional. The forum-classification of Section 5717.05 bears no rational relation to any legitimate state purpose. There is no reason for the Court of Common Pleas to have different jurisdictional requirements than the Board of Tax revision. Both forums serve the same function, and are considered alternatives to each other. The state cannot enunciate a legitimate reason for disparate treatment of appellants based on a forum classification. This is especially true when the impact of the disparate treatment, namely a complete dismissal of an appeal for a technical omission or error or inadequacy, is so severe. Therefore Ohio Rev. Code § 5717.05, which

requires different procedures in its Notices of Appeal based solely on the classification of the forum chosen, violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

The classification of O.R.C. §5717.05 cannot be justified based on the rights of a state to set the procedures of its own courts. This Court has held that different judicial/court procedures for different classes of individuals does not violate the Equal Protection Clause so long as the differing treatment is reasonable. Dohany v. Rogers, 281 U.S. 362 (1930); Sellers v. Home Finance Co., 235, 235 Ga 831 (1976), aff'd 284 U.S. 594. In the present case, the difference between the review procedures of O.R.C. §5717.05 and O.R.C. §5717.01 is unreasonable. The decision to differ the procedure for appeals to the court

of common pleas from the procedure for appeals to the Board of Tax Appeals treats like appellants differently. This classification based on the forum for appeal is irrational and discriminatory, and unreasonable.

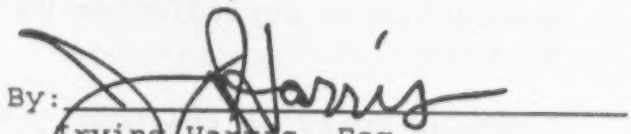
For all of the foregoing reasons, Ohio Revised Code §5717.05 violates the Equal Protection Clause of the Fourteenth Amendment.

IV. CONCLUSION

We urge this Court to find the current interpretation of Ohio Revised Code §5717.05 unconstitutional, in violation of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and to thereby reverse the findings of the Trial Court and remand the case to the Trial Court with instructions to try the underlying appeal from the Board of Revision of

Hamilton County on its merits under the First Amended Notice of Appeal.

Respectfully submitted,



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The Supreme Court of Ohio

1997 Term

Colerain Hills Investment Co., Appellant,	:	Case No. 97-1928
v.	:	
Board of Revision of Hamilton County; Cincinnati School District, and Dusty Rhodes, Auditor of Hamilton County, Appellees.	:	ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket fee, $40.00, paid by Harris, Harris & Field, Ltd.

(Hamilton County Court of Appeals; No. C960158)

s/s

THOMAS J. MOYER

Chief Justice

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IN THE SUPREME COURT OF OHIO

COLERAIN HILLS INVESTMENT CO.	:	Appeal No. C-961058
	:	Trial No. A9601045
Appellant	:	
	:	
vs.	:	
	:	
BOARD OF REVISION OF HAMILTON COUNTY	:	
	:	
and	:	
	:	MEMORANDUM OF JURISDICTION
NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION	:	
	:	
and	:	
	:	
DUSTY RHODES, AUDITOR OF HAMILTON COUNTY	:	
	:	
Appellees.	:	

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EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This cause presents two issues which are critical to the administration of appeals from the Board of Tax Revision; (1) Whether Ohio Revised Code § 5717.05, as interpreted, is unconstitutional in violation of the Due Process Clause of the U.S. and Ohio Constitution, and (2) whether Ohio Revised Code § 5717.05, as interpreted, is unconstitutional in violation of the Equal Protection Clause of the U.S. and Ohio Constitution.

The Court of Appeals in the present case held that where the Appellant erroneously named the improper local school board as a party in its tax appeal, said error is jurisdictional and cannot be corrected. Thus, such error cannot be rectified by amendment and the appeal is thereby dismissed. This same holding was

issued by the Ohio Supreme Court in Huber Heights Circuit Courts, Ltd. v. Carne, 74 Ohio St.3d 306, 658 N.E.2d 774 (1996). In Huber, the Court ruled on a certified question of the Court of Appeals as to whether the joinder of all parties to a tax appeal is jurisdictional, and the Court answered in the affirmative. Id. at 307, 658 N.E.2d at 745. The Court of Appeals in the present case stated that while it felt that its decision to dismiss the appeal for failure to name the proper school board "seems harsh", the court stated that it was "compelled" by the decision in Huber. See Judgment Entry, Appendix Pg. 1.

The Supreme Court's decision in Huber, and the Court of Appeal's interpretation of it and Ohio Revised Code §5717.05, sets a dangerous precedent. Not only does the interpretation of

Ohio Revised Code §5717.05 violate the Due Process and Equal Protection Clauses of the Ohio and U.S. Constitutions, the current interpretation of Section 5717.05 also elevates the procedural and administrative rules of the Court above the need to have cases heard on their merits. As such, the Court today is urged to reverse the decision by the Court of Appeals to dismiss the appeal in the present case, and to thereby overturn its decision in Huber.

STATEMENT OF THE CASE AND FACTS

The underlying action is an appeal of the final determination by the Hamilton County Board of Revision of the value of Appellant's property. Colerain Hills Investment Co. owns property upon which is situated a shopping center and a Ford dealership. The Hamilton

County Auditor in his evaluation of the total worth of the property grossly over-estimated the worth of the dealership and shopping center, for which reason the owner appealed the evaluation.

The Appellant in this case filed a complaint with the Hamilton County Board of Revision (hereinafter "BOR") contesting value of his property as appraised by the County Auditor. Rather than reduce the appraisal by the County Auditor, however, the Hamilton County BOR instead increased the fair market value of the shopping center and the Ford Dealership beyond the value placed upon it by the Hamilton County Auditor, beyond the value placed upon it by the Appellant's appraiser, and well beyond the value placed upon it by the correct school board, the Northwest Local

School Board's appraiser, based upon no evidence or logic.

The owner timely appealed the BOR's decision to the Court of Common Pleas under Ohio Rev. Code § 5715.05, electing not to appeal to the Board of Tax Appeals under Ohio Rev. Code § 5717.01. In doing so, Appellant erroneously named the Cincinnati School District instead of the adjacent Northwest Local School District Board of Education in the Notice of Appeal from the Decision of the Board of Revision of Hamilton County. After this error, the Appellee Hamilton County Auditor filed a Motion to Dismiss for failure to name a necessary party. The Appellant promptly filed a First Amended Notice of Appeal naming the proper school board, the Northwest Local School District Board of Education, and

Appellee Hamilton County Auditor filed a Motion to Dismiss the Amended Notice of Appeal. The court of common pleas granted the Motion to Dismiss, and the court of appeals approved, citing Huber as binding precedent.

Factually, however, the appeal before the Court of Appeals differs greatly from Huber in three regards. First, in Huber, no constitutional issues were raised or considered by the court, unlike appellant's case. Second, the appellants in Huber completely failed to name any school board and made no attempts to amend the deficient complaint. Third, in the present case the valuation evidence of the proper school board, the Northwest Local School Board, presented to the BOR was substantially lower than the value found by the BOR itself,

so the Northwest Local School Board cannot claim that it was prejudiced.

ARGUMENT IN SUPPORT OF PROPOSITIONS

Proposition of Law No. 1: Ohio Revised Code Section 5717.05 violates the Due Process Clause of the Ohio and U.S. Constitution.

Article 1, Section 2 of the Ohio Bill of Rights declares that government is instituted for the equal protection and benefit of the people.[1] Likewise, the Fourteenth Amendment of

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1. Article I, Section 2 of the Ohio Bill of Rights, specifically provides:

> All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same, whenever they deem it necessary, and no special

the Constitution of the United States declares that no state shall deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV. In addition, State and Federal Constitutional provisions proscribe the taking of property without due process of law. U.S. Const. amend. V; Ohio Const. Art. 1, § 1.

The Due Process clause has been interpreted to have two components; one substantive and one procedural. See Cite. Procedural Due process requires the government to provide its citizens with the proper

---

privileges or immunities shall ever be granted, that may not be altered, revoked or repealed by the general assembly.

procedural safeguards, namely notice and a forum to be heard, before depriving them of property or liberty. Substantive Due process also prohibits a government from depriving its citizens of their fundamental rights, or those rights inherent in a concept of ordered justice and liberty. See Moore v. East Cleveland; 431 U.S. 494, 503, 97 S.Ct. 1932, 1937-38 (1977)(Plurality opinion).

In the present case, the Appellant has been denied its Due Process rights due to the requirements of Ohio Revised Code §5717.05. The current interpretation of O.R.C. §5717.05, adopted by the Court of common pleas and the Court of appeals, is that (i) the Appellant's failure to originally name the Northwest Local School District as an appellee in its original Notice of Appeal was a jurisdictional defect,

and (ii) such Notice of Appeal was not capable of revision.. This holding results in the application of Ohio Rev. Code §5717.05 in a manner that violates Appellant's constitutional right to due process. Specifically, O.R.C. §5717.05, as interpreted, deprives aggrieved property taxpayers a chance to have a hearing on their case in the Court system.

Ohio Revised Code Section 5717.05 provides a judicial means for an aggrieved taxpayer to challenge a determination of the BOR with respect to valuation of real property. Specifically, § 5717.05 allows a taxpayer to prosecute an appeal in the Court of Common Pleas, in the county where the subject parcel is situated. Ohio Rev. Code. Ann. § 5717.05 (Anderson, 1996). In such a case, the Court of Common Pleas may review the record as on

appeal, or the Court may hear evidence on its own as an independent trier of fact. O.R.C. §5717.05. As an alternative to having an appeal heard in the Court of Common Pleas, an aggrieved taxpayer may, pursuant to Ohio Rev. Code § 5717.01, have his appeal heard before the Board of Tax Appeals, an administrative agency, which Board is situated in Columbus. Ohio Rev. Code. Ann. § 5717.01 (Anderson, 1996). Appeals from determinations of both the Board of Tax Appeals and the Court of Common Pleas in tax valuation matters are heard by the Court of Appeals in the District where the subject parcel is situated.

It is well established that where matters usually recognized as of judicial cognizance are determined by administrative agencies, such matters must necessarily be appealable to some

court. Clermont National Bank v. Edwards, 27 Ohio App.2d 91, 102, 273 N.E.2d 783, 789 (1970)(Quasi-judicial decisions and orders of administrative officers and agencies require review). It is clear that the County Board of Revision exercises quasi-judicial functions, thereby necessitating judicial review of their decisions. State ex rel Toledo Trust Co. v. Fox, 39 Ohio App. 465, 467-468, 177 N.E. 652, 653 (1931)(County board of revision is a quasi-judicial body with specific and limited judicial powers and duties). Thus, property taxpayers have a right to have BOR decisions reviewed by the Courts of Ohio, not merely by another administrative agency like the Board of Tax Appeals.

In the instant matter, Appellant is being denied his right to judicial review of the

BOR's decision due to a hyper-technical reading of Ohio Rev. Code § 5717.05. The holding of Huber requires the naming of all parties to the underlying tax proceeding on the notice of appeal for jurisdictional purposes. 74 O.St.3d at 307, 658 N.E.2d at 745. In Huber, the failure of the appellant to identify the proper local school district and notice the same within the thirty (30) day appeal period provided for under Ohio Rev. Code §5717.05 was determined to be a jurisdictional defect which is incapable of revision or amendment. 74 O.St.3d at 306-307, 658 N.E.2d at 744-745.

Such a requirement is notably absent from the parallel legislation, Ohio Rev. Code § 5717.01, which alternatively allows a taxpayer to prosecute an appeal before the Board of Tax Appeals. Specifically, Ohio Rev. Code §

5717.01 allows the administrative agency of the Board of Tax Appeal to hear an appeal from a BOR decision upon the mere filing of a notice of appeal with both administrative agencies. O.R.C. §5717.01. Failure to name the proper school district in an appeal to the Board of Tax Appeals, therefore, would not result in the dismissal of the appeal.

A reading of Ohio Rev. Code § 5717.05 in the manner argued by Appellant and determined by the Magistrate and adopted by the Court, i.e., that the failure to initially name the Northwest Local School District as an appellee is a jurisdictional defect and incapable of cure, deprives the taxpayer of due process by denying him the opportunity to have a hearing on his tax appraisal case before a judicial body. The Appellant has been denied a forum

for an appeal and a day in Court to contest this incomprehensible result by reason of the conflict between appeals rights afforded under Ohio Rev. Code §5717.05 governing appeal of the identical issue to the Court of Common Pleas. The courts never heard the merits of Appellant's case; only the BOR, an administrative agency, heard the case. This administrative hearing does not comply with the demands of procedural Due Process. Such an application of Ohio Rev. Code § 5717.05 conflicts with the treatment of similarly situated taxpayers under Ohio Rev. Code § 5717.01, and denies taxpayers, similarly situated, due process of law.

The Ohio Supreme Court has pronounced that "in resolving questions regarding the effectiveness of a notice of appeal, we are not

disposed to deny review by a hyper-technical reading of the notice." Buckeye International, Inc. v. Limbach 64 Ohio St.3d 264, 268, 595 N.E.2d 347, 350(1992)(citing Abex Corp. v. Kosydar, 35 Ohio Sat. 2d 13, 17, 64 O.O.2d 8, 10, 298 N.E.2d 584, 587 (1973)). It cannot be argued that the unequal treatment occasioned by Appellee's interpretation of the Huber case, relied upon by Appellee, rationally furthers a governmental interest, and thus such application of the statute is violative of Article I, Section 2 of the Bill of Rights and the U.S. Constitution, Amend. XIV, Section 1, and further, violates Appellant's right to due process under Article I, Section 1 of the Ohio Constitution and the Fifth and Fourteenth Amendments of the U.S. Constitution.

Proposition of Law No. II: Ohio Revised Code Section 5717.05 violates the Equal Protection Clause of the Ohio and U.S. Constitutions

The Fourteenth Amendment to the Constitution of the United States, adopted in 1868, states clearly:

> No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* (Emphasis ours).

U.S. Const. amend. XIV, § 1.

As it has been interpreted by the Supreme Court, the Equal Protection clause of the Fourteenth Amendment guarantees that the

government will treat similar people in a similar manner. See, e.g. Hartford Steam Boiler Inspection and Insurance Co. v. Harrison, 301 U.S. 459, 57 S.Ct. 838 (1937). A state government may create classes of individuals for whom certain laws and rights may apply, as long as those classifications serve a purpose. If, however, a state creates a class of individuals who receive different treatment from other similarly-situated individuals, and there is no reason for the differing treatment, the state violates the equal protection clause of the Fourteenth Amendment. See, e.g. Hartford, Supra; See also, generally Sutton v. Mt. Sinai Medical Center, 102 Ohio App. 3d 641, 657 N.E. 2d 808(1995); Sorrell v. Thevenir, 69 Ohio St. 3d 415, 633 N.E.2d 504 (1994); Borden Farm

Products Co. v. Baldwin, 293 U.S. 194, 55 S.Ct. 187 (1934); Craig v. Boren, 429 U.S. 190, 97 S.Ct. 451 (1976); Lindsey v. Normet, 405 U.S. 56, 92 S.Ct. 862 (1972); Maynard v. B.F. Goodrich Co., 144 Ohio St. 22, 56 N.E.2d 195 (1944); Gallagher v. State, 274 Ind. 235, 410 N.E.2d 1290 (1980); Hocking Valley Coal Co. v. Rosser, 53 Ohio St. 12, 41 N.E. 263 (1895).

When the Supreme Court reviews a state law claimed to be in violation of the equal protection clause, it employs differing standards of review. State classifications which do not involve a fundamental right or a suspect class are generally reviewed pursuant to a "rational basis" test. See, e.g., Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148 (1982). Under this lenient standard, a statute will be upheld as long as the

classification has a rational relationship to a legitimate, articulated government interest. See, e.g. McGinnis v. Royster, 410 U.S. 263 (1973); Finley v. California, 222 U.S. 28, 56 L.Ed. 75, 32 S.Ct. 13 (1911). Although the classification enjoys a strong presumption of validity under this standard of review, purely arbitrary classifications are forbidden. See, e.g. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

In the present case, the state of Ohio created classes of individuals who have the right to a tax appeal. The classification is based on forum selection, on the individual's choice of appellate courts in which to review a decision by the BOR, viz: Individuals choosing the O.R.C. § 5717.01 appeals route, or the "administrative-route", may have their

appeal heard despite errors in pleading, just so long as a notice of appeal is filed, whereas individuals choosing the O.R.C. § 5717.05 route of appeals, or the "judicial-route", will have their appeal dismissed for failure to name the proper parties in the notice of appeal. In Ohio, therefore, O.R.C. § 5717.05 denies appellants the right to appeal based solely on the forum chosen.

The forum-selection classification of O.R.C. § 5717.05 discriminates against those appellants choosing the judicial-route to appeal the decision by the BOR. Tax appellants choosing the judicial-route, even though the basic issue viz: valuation is the same in appeals to the Board of Tax Appeals, are not considered a suspect class of individuals. Therefore classifications of benefits or rights

having to do with them will be reviewed under a rational basis standard to determine their constitutionality.

This classification based on forum bears no rational relation to any legitimate state purpose. Both forums serve the same function, and are considered alternatives to each other. O.R.C. §5717.05. The classification of O.R.C. §5717.05 cannot be justified based on the legitimate state interest in setting the procedures of its own courts. The Supreme Court has held that different judicial/Court procedures for different classes of individuals does not violate the Equal Protection Clause so long as the differing treatment is reasonable. Dohaney v. Rogers, 281 U.S. 362 (1930). Although the Ohio legislature has the right to determine the procedures for appeals from the

Board of Revision, this right will not permit them to enact discriminatory and arbitrary classifications such as the one found in O.R.C. §5717.05.

Further, the impact of the disparate treatment is extremely harsh and far outweighs any minor interest served by the classification. Appellants face complete dismissal of an appeal are thereby denied an opportunity to be heard by the judicial system due to a minor technical omission, error, or inadequacy. Therefore Ohio Rev. Code §5717.05, which requires different procedures in its Notices of Appeal based solely on the classification of the forum chosen, violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

CONCLUSION

For the reasons discussed above, this case involves substantial constitutional questions. The appellant requests that this Court grant jurisdiction and allow this case so that the important issues presented in this case will be reviewed on the merits.

Respectfully submitted,

By: s/s _____
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Proof of Service

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by Ordinary U.S. Mail to counsel for appellees, Joseph T. Deters, Prosecuting Attorney, Hamilton County, Ohio, by Thomas Scheve, Assistant Prosecuting Attorney, Attorney for Appellee Board of Revision of Hamilton County and Dusty Rhodes, Hamilton County Auditor, at 125 E. Court Street, Suite 300, Cincinnati, Ohio 45202, and to William J. Ennis, Attorney for Appellee the Board of Education of Northwest Local School, at Ennis, Robert & Fischer Co., LPA, 121 W. Ninth Street, Cincinnati, Ohio 45202 this 12th day of September, 1997.

S/S
Irving Harris, Esq.
TRIAL ATTORNEY FOR
APPELLANT COLERAIN HILLS
INVESTMENT CO.

APPENDIX

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

COLERAIN HILLS INVESTMENT CO.,	:	APPEAL NO. C-961058 TRIAL NO. A-9601045
Appellant,	:	
vs.	:	JUDGMENT ENTRY
BOARD OF REVISION OF HAMILTON COUNTY,	:	
CINCINNATI CITY SCHOOL DISTRICT,	:	
and	:	
DUSTY RHODES, AUDITOR OF HAMILTON COUNTY	:	
Appellees.	:	

This appeal, considered on the accelerated calendar under App. R. 11(E) and Loc.R. 12, is not controlling authority except as provided in S.Ct.R.Rep. Op. 2(G)(1).

The assignment of error, which alleges that the trial court erred in dismissing

appellant's appeal under R.C. 5717.05, is overruled. We acknowledge that this result seems harsh; however, it is compelled by the decision by the Ohio Supreme Court in *Huber Heights Circuit Courts, Ltd. v. Carne* (1996), 74 Ohio St.3d 306, 658 N.E.2d 74, wherein the Court stated:

> R.C. 5717.05 sets forth who may appeal, how one appeals, whom the appellant names as appellees, and how the appellant serves appellees with notice of the appeal. We read this statute as mandatory and jurisdictional. Since appellants did not follow the statute precisely, the court of common pleas correctly dismissed their appeals.

Id. at 308, N.E.2d. at 745.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J.; DOAN and HILLENBRANDT, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 30, 1997 per Order of the Court s/s _____ ___.

Presiding Judge

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

COLERAIN HILLS INVESTMENT CO.,	:	APPEAL NO. C-961058
		TRIAL NO. A-9601045
	:	
Appellant,		
	:	
vs.		
	:	JUDGMENT ENTRY
BOARD OF REVISION OF HAMILTON COUNTY,	:	
CINCINNATI CITY SCHOOL DISTRICT,	:	
	:	
and		
	:	
DUSTY RHODES, AUDITOR OF HAMILTON COUNTY	:	

:

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PAINTER, P.J.; DOAN and HILLENBRANDT, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 30, 1997 per Order of the Court

s/s _____.

Presiding Judge

Irving Harris, Esq.
Ohio Bar No. 0023001
Trial Attorney for Appellant
Colerain Hills Investment Co.

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

COLERAIN HILLS INVESTMENT CO.	:	Appeal No. C-961058
	:	Trial No. A9601045
Appellant	:	
	:	
vs.	:	
	:	
BOARD OF REVISION OF HAMILTON COUNTY	:	
	:	
and	:	
	:	**BRIEF OF APPELLANT**
NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION	:	
	:	
and	:	
	:	
DUSTY RHODES, AUDITOR OF HAMILTON COUNTY	:	
	:	
Appellees.	:	

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Attorney for Appellee the Board of
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1. Where an appellant appeals from a decision by the Board of Tax revision and chooses the Court of Common Pleas as its forum pursuant to Ohio Rev. Code § 5717.05, instead of the Board of Tax Appeals pursuant to Ohio Rev. Code § 5717.01, and where Ohio Rev. Code § 5717.05 requires Notices of Appeal to include the local school board as a party and Ohio Rev.

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2. Where an appeal from a decision by the Board of Revision may be heard by either the Court of Common Pleas pursuant to Ohio Rev. Code § 5717.05 or the Board of Tax Appeals pursuant to Ohio Rev. Code § 5717.01, and where Ohio Rev. Code § 5717.05 requires naming the school board and Ohio Rev. Code § 5717.01 does not have such a requirement, and where the Court of Common Pleas dismisses an appeal for failure to name the proper school board as a party under Ohio Rev. Code § 5717.05, Ohio Rev. Code § 5717.05 violates

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3. Under Ohio statutes and case law, which indicate that a notice of appeal may be

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II STATEMENT OF THE CASE

A. PROCEDURAL POSTURE

The Appellant in this case filed a complaint with the Hamilton County Board of Revision contesting the value of its property as of January 1, 1993. At the Board of Revision hearing, the Appellant claimed the value of its property was $11,150,000 (BOR hearing, T.p. 2). The County Auditor had appraised the property at $11,704,000 (BOR hearing, T.p. 1).

At the hearing, Shawn Wilkins, MAI, testified for Appellant as to his appraisal of the fair market value on January 1, 1993, valuing the Colerain Hills Shopping Center at $8,900,000 (BOR transcript, T.p. 9), valuing the Ford Dealership on the property at $2,250,000 (BOR hearing, T.p. 17), for a total fair market value of $11,150,000. The County

presented Thomas Willingham, a staff appraiser for the Hamilton County Auditor, who valued the shopping center at $10,500,000 (BOR hearing, T.p. 24) and valued the Ford Dealership at $2,575,000 (BOR hearing, T.p. 25), with a total fair market value of the taxpayer's property of $13,075,000 by erroneously including in this valuation a mobile home park in which the Appellant had no interest whatsoever and which he valued at $375,000 (BOR hearing, T.p. 25 and 30).

The Northwest Local School District Board of Education presented no evidence but had provided the Board of Revision with an appraisal prepared by Joseph L. Schaffer, which appraised all of Appellant's property at a fair market value of a total of $11,000,000 (BOR hearing, T.p. 39, Schaffer's appraisal, Exhibit 4).

The Board of Revision determined that the value should be $12,750,000 (BOR transcript, annexed to p.1)

The owner timely appealed the decision of the Board of Revision to the Court of Common Pleas under Ohio Rev. Code § 5715.05, electing not to appeal to the Board of Tax Appeals under Ohio Rev. Code § 5717.01.

In doing so, Appellant erroneously named the Cincinnati School District instead of the Northwest Local School District Board of Education in the Notice of Appeal from the Decision of the Board of Revision of Hamilton County (Appellant's Notice of Appeal, T.D. 1).

The Appellee Hamilton County Auditor filed a Motion to Dismiss for failure to name a necessary party (T.D. 9). The Appellant promptly filed a First Amended Notice of Appeal naming the Northwest Local School District Board of Education (T.D. 10) and Appellee Hamilton County Auditor filed a

Motion to Dismiss the Amended Notice of Appeal (T.D. 12). The issue went to Magistrate Judge Bernat and was thoroughly briefed (T.D. 13, 14, 15, and 16). The Magistrate Judge granted the Motion to Dismiss, holding the requirements of Ohio Rev. Code § 5717.05 are jurisdictional and cannot be cured (T.d.17).

The Appellant objected to the Magistrate's Decision (T.D. 18) and the objection was heard by the Honorable Thomas Nurre upon the Briefs and Supplemental Authorities (T.D. 21, 22), who entered a Final Judgment Entry Affirming the Magistrate's Decision (T.D. 23), whereupon this appeal was taken.

B. **STATEMENT OF FACTS**

The underlying action is an appeal of the final determination of the Hamilton County Board of Revision, which increased the fair market value of the shopping center and the Ford Dealership upon which the Appellant was

assessed, beyond the value placed upon it by the Hamilton County Auditor of $11,704,000; beyond the value placed upon it by the Appellant's appraiser and the only MAI to testify, Mr. Shawn Wilkins, of $11,150,000, and well beyond the value placed upon it by the Northwest Local School Board's appraiser of $11,000,000 based upon no evidence or logic.

The Appellant has been denied a forum for an appeal and a day in court to contest this incomprehensible result by reason of the conflict between appeal rights afforded under Ohio Rev. Code § 5717.01 governing appeal to the Board of Tax Appeals and Ohio Rev. Code § 5717.05 governing appeal of the identical issue to the Court of Common Pleas.

III. ARGUMENT

FIRST ASSIGNMENT OF ERROR

THE COURT OF COMMON PLEAS ERRED TO THE PREJUDICE OF APPELLANT WHEN IT DISMISSED

APPELLANT'S APPEAL FOR FAILURE TO NAME THE PROPER SCHOOL BOARD AS A PARTY TO THE APPEAL.

1. Issue Presented for Review and Argument

Where an appellant appeals from a decision by the Board of Tax revision and chooses the Court of Common Pleas as its forum pursuant to Ohio Rev. Code § 5717.05, instead of the Board of Tax Appeals pursuant to Ohio Rev. Code § 5717.01, and where Ohio Rev. Code § 5717.05 requires Notices of Appeal to include the local school board as a party and Ohio Rev. Code § 5717.01 does not have such a requirement, the dismissal of the appellant's appeal for failure to comply with the Ohio Rev. Code § 5717.05 requirements violates the appellant's Fifth Amendment Due Process rights and its right to be heard on appeal.

In its Reply Memorandum to the pending Motion to Dismiss (T.D. 8-1), the Appellee

County Auditor admits that the dismissal of the pending appeal "is a harsh result and does not seem fair." Appellee opines that the Supreme Court of Ohio removed fairness from the equation with its decision in Huber Heights v. Carne 74 Ohio St.3d 306, 658 N.E.2d 744, (1996). For the reasons set forth hereinbelow, a lack of "fairness" equates with a lack of due process afforded under the State and Federal Constitutions.

Article 1, Section 2 of the Ohio Bill of Rights declares that government is instituted for the equal protection and benefit of the people.[2] Likewise, the Fourteenth Amendment of

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1. Article I, Section 2 of the Ohio Bill of Rights, specifically provides:

> All political power is inherent in the people. Government is

the Constitution of the United States declares that no state shall deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV. In addition, State and Federal Constitutional provisions proscribe the taking of property without due process of law. U.S. Const. amend. V; Ohio Const. Art. 1, § 1.

> instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same, whenever they deem it necessary, and no special privileges or immunities shall ever be granted, that may not be altered, revoked or repealed by the general assembly.

The Magistrate's Decision adopted by the Court that (i) the Appellant's failure to originally name the Northwest Local School District as an appellee in its original Notice of Appeal was a jurisdictional defect, and (ii) such Notice of Appeal was not capable of revision, results in the application of Ohio Rev. Code § 5717.05 in a manner that violates Appellant's constitutional right to due process.

Ohio Revised Code Section 5717.05 provides a judicial means for an aggrieved taxpayer to challenge a determination of a County Board of Revision with respect to valuation of real property. Specifically, § 5717.05 allows a taxpayer to prosecute an appeal in the Court of Common Pleas, in the county where the subject parcel is situated. Ohio Rev. Code. Ann. § 5717.05 (Anderson,

1996). As an alternative to having an appeal heard in the Court of Common Pleas, an aggrieved taxpayer may, pursuant to Ohio Rev. Code § 5717.01, have his appeal heard before the Board of Tax Appeals, an administrative agency, which Board is situated in Columbus. Ohio Rev. Code. Ann. § 5717.01 (Anderson, 1996). Appeals from determinations of both the Board of Tax Appeals and the Court of Common Pleas in tax valuation matters are heard by the Court of Appeals in the District where the subject parcel is situated.

It is well established that where matters usually recognized as of judicial cognizance are determined by administrative agencies, such matters must necessarily be appealable to some court. Clermont National Bank v. Edwards, 27 Ohio App.2d 91, 102, 273 N.E.2d 783, 789 (1970)(Quasi-judicial decisions and

orders of administrative officers and agencies require review). It is clear that the County Board of Revision exercises quasi-judicial functions, thereby necessitating judicial review of their decisions. State ex rel Toledo Trust Co. v. Fox, 39 Ohio App. 465, 467-468, 177 N.E. 652, 653 (1931)(County board of revision is a quasi-judicial body with specific and limited judicial powers and duties).

In the instant matter, Appellant is being penalized by a hyper-technical reading of Ohio Rev. Code § 5717.05, which requires the naming of all parties to the underlying tax proceeding on the notice of appeal for jurisdictional purposes. Such a requirement is notably absent from the parallel legislation, Ohio Rev. Code § 5717.01, which alternatively allows a taxpayer to prosecute

an appeal before the Board of Tax Appeals. Specifically, Ohio Rev. Code § 5717.01 provides for the prosecution of an appeal from a determination of the County Board of Revision to the Board of Tax Appeals upon the mere filing of a notice of appeal with the County Board of Revision and the Board of Tax Appeals.

By contrast, in this case, the failure of Appellant to identify the proper local school district and notice same within the thirty (30) day appeal period provided for under Ohio Rev. Code § 5717.05 has been determined to be a jurisdictional defect which is incapable of revision or amendment. Clearly, all taxpayers aggrieved by an adverse determination by the County Board of Revision are similarly situated, and no rational basis exists for the inequitable and disparate treatment of

taxpayers which elect judicial review rather than administrative review.

A reading of Ohio Rev. Code § 5717.05 in the manner argued by Appellant and determined by the Magistrate and adopted by the Court, i.e., that the failure to initially name the Northwest Local School District as an appellee is a jurisdictional defect and incapable of cure, deprives the taxpayer of due process and an opportunity to challenge the County Board of Revision's tax assessment in a judicial proceeding. Such an application of Ohio Rev. Code § 5717.05 conflicts with the treatment of similarly situated taxpayers under Ohio Rev. Code § 5717.01, and denies taxpayers, similarly situated, due process of law.

The Ohio Supreme Court has pronounced that "in resolving questions regarding the effectiveness of a notice of appeal, we are

not disposed to deny review by a hyper-technical reading of the notice." Buckeye International, Inc. v. Limbach 64 Ohio St.3d 264, 268, 595 N.E.2d 347, 350(1992)(citing Abex Corp. V. Kosydar, 35 Ohio Sat. 2d 13, 17, 64 O.O.2d 8, 10, 298 N.E.2d 584, 587 (1973)). It cannot be argued that the unequal treatment occasioned by Appellee's interpretation of the Huber case, relied upon by Appellee, rationally furthers a governmental interest, and thus such application of the statute is violative of Article I, Section 2 of the Bill of Rights and the U.S. Constitution, Amend. XIV, Section 1, and further, violates Appellant's right to due process under Article I, Section 1 of the Ohio Constitution and the Fifth and Fourteenth Amendments of the U.S. Constitution.

For an example of an appeal to the Board of Tax Appeals which does not join the school district, see Orange City School District Board of Education v. Cuyahoga Board of Revision, 74 Ohio St. 3d 415, 659 N.E.2d 1223 (1996).

2. Issue Presented for Review and Argument

Where an appeal from a decision by the Board of Revision may be heard by either the Court of Common Pleas pursuant to Ohio Rev. Code § 5717.05 or the Board of Tax Appeals pursuant to Ohio Rev. Code § 5717.01, and where Ohio Rev. Code § 5717.05 requires naming the school board and Ohio Rev. Code § 5717.01 does not have such a requirement, and where the Court of Common Pleas dismisses an appeal for failure to name the proper school board as a party under Ohio Rev. Code § 5717.05, Ohio Rev. Code § 5717.05 violates the Fourteenth

Amendment's Equal Protection clause because it treats similarly situated appellants differently based on the forum they choose.

The Fourteenth Amendment to the Constitution of the United States, adopted in 1868, states clearly:

> No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Emphasis ours).

U.S. Const. amend. XIV, § 1.

As it has been interpreted by the Supreme Court, the Equal Protection clause of the Fourteenth Amendment guarantees that the government will treat similar people in a similar manner. See, e.g. Hartford Steam Boiler Inspection and Insurance Co. v. Harrison, 301 U.S. 459, 57 S.Ct. 838 (1937). The government may, of course, classify individuals when it creates and applies laws, but those classifications may not be arbitrary. See, e.g. Hartford, Supra; See also, generally Sutton v. Mt. Sinai Medical Center, 102 Ohio App. 3d 641. 657 N.E. 2d 808(1995); Sorrell v. Thevenir, 69 Ohio St. 3d 415, 633 N.E.2d 504 (1994); Borden Farm Products Co. v. Baldwin, 293 U.S. 194, 55 S.Ct. 187 (1934); Craig v. Boren, 429 U.S. 190, 97 S.Ct. 451 (1976); Lindsey v. Normet, 405 U.S. 56, 92 S.Ct. 862 (1972); Maynard v.

B.F. Goodrich Co., 144 Ohio St. 22, 56 N.E.2d 195 (1944); Gallagher v. State, 274 Ind. 235, 410 N.E.2d 1290 (1980); Hocking Valley Coal Co. v. Rosser, 53 Ohio St. 12, 41 N.E. 263 (1895). The Supreme Court, when reviewing classifications which do not involve a fundamental right or a suspect class, generally employs a "rational basis" test. See, e.g., Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148 (1982); The Court reviews the classification and upholds the statute as long as the classification has a rational relationship to a legitimate, articulated government interest. See, e.g. McGinnis v. Royster, 410 U.S. 263 (1973). Although the classification enjoys a strong presumption of validity under this standard of review, purely arbitrary classifications are

forbidden. See, e.g. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

In the present case, Ohio Rev. Code § 5717.05 treats similarly-situated individuals differently, solely because they chose to pursue their appeal in the Court of Common Pleas instead of the Board of Tax Appeals. Section 5717.05 requires the naming of all parties to the underlying tax proceeding on the notice of appeal for jurisdictional purposes, and courts may dismiss an appeal for failure to comply. Ohio Rev. Code Ann. § 5717.05 (Anderson, 1996). Individuals appealing to the Board of Tax Appeals pursuant to Ohio Rev. Code § 5717.01, however, need not adhere to such requirements. Ohio Rev. Code § 5717.05 therefore classifies individuals who appeal a Board of Revision decision based on the forum they choose.

This classification based on forum bears no rational relation to any legitimate state purpose. There is no reason for the Court of Common Pleas to have different jurisdictional requirements than the Board of Tax revision. Both forums serve the same function, and are considered alternatives to each other. The state cannot enunciate a reason for disparate treatment of appellants based on a forum classification. This is especially true when the impact of the disparate treatment, namely a complete dismissal of an appeal for a technical omission or error or inadequacy, is so severe. Therefore Ohio Rev. Code § 5717.05, which requires different procedures in its Notices of Appeal based solely on the classification of the forum chosen, violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

3. **Issue Presented for Review and Argument**

Under Ohio statutes and case law, which indicate that a notice of appeal may be amended for good cause, where Appellant's Notice of Appeal does not include the proper school board as a party and thus fails to adhere to the requirements of Ohio Rev. Code § 5717.05, a court should allow Appellant to amend the Notice of Appeal.

Ohio Rev. Code § 5717.05 enables the direct appeal of a decision of the Board of Revision to the Court of Common Pleas. Section 5717.05 provides in pertinent part:

> [A]n appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property

> is listed or sought to be listed for taxation. The appeal shall be taken by the filing of a notice of appeal with the court and with the board within thirty days after notice of the decision of the board is mailed as provided in section 5715.20 of the Revised Code...(emphasis added)

Ohio Rev. Code Ann. § 5717.05 (Anderson 1996).

In the instant matter, Appellant's Notice of Appeal was filed with the Court and with the Board within thirty (30) days after notice of the decision of the Board was mailed.

Chapter 2505 of the Ohio Revised Code, entitled Procedure on Appeal, complements the appeal provisions of Ohio Rev. Code § 5717.05, and is determinative in the resolution of the legal issue raised by the County in its Motion

to Dismiss, namely whether Appellant's initial Notice of Appeal was ineffective to vest this Court with jurisdiction, and whether amendment of the Notice was contrary to law.

Pursuant to Chapter 2505, "Appeal" is defined as "all proceedings in which a court reviews or retries a cause determined by another court or by an administrative officer, agency, board, department, tribunal, commission, or other instrumentality." Ohio Rev. Code Ann. § 2505.01(A)(1) (Anderson, 1996). Thus, the provisions of Chapter 2505 apply to the instant appeal.

Within Chapter 2505, Ohio Rev. Code § 2505.04, entitled Appeal perfected, expressly provides:

> An appeal is perfected when a notice of appeal is filed ... in the case of an administrative-

> related appeal, with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved...

Ohio Rev. Code Ann. § 2505.04 (Anderson, 1996).

Ohio Rev. Code § 2505.04 is wholly consistent with the provisions of Ohio Rev. Code § 5717.05. Further, whereas § 5717.05 is silent as the issue of amendment of a notice of appeal, § 2505.05 expressly allows for such amendment, explicitly providing: "...and the notice of appeal may be amended with the approval of the appellate court for good cause shown...". Ohio Rev. Code Ann. § 2505.05 (Anderson, 1996). Such authority is consistent with other rules of appellate procedure. Authority for the amendment of a

notice of appeal also exists pursuant to Rule 3 of the Rules of Appellate Procedure, which expressly provides that the courts of appeal may, within their discretion, and upon terms that are just, allow the amendment of a timely filed notice of appeal.

Further, it has been stated that under Ohio Rev. Code § 2505.04, the only jurisdictional requirement is the filing of the notice of appeal. Moore v. Cleveland Civil Service Comm., 11 Ohio App.3d 273, 275-276, 465 N.E.2d 482, 484-485 (1983)(citing Woods v. Civil Serv. Comm., 7 Ohio App.3d 304, 306-306, 455 N.E.2d 709 (1983)). This is true even where the contents of the notice of appeal are prescribed by statute. Moore, 11 Ohio App.3d at 275, 465 N.E.2d at 484. In particular, Ohio Rev. Code § 2505.05 sets forth the information required to be

designated in the notice of appeal. Id. Similar to Ohio Rev. Code § 5717.05, Ohio Rev. Code § 2505.05 requires, inter alia, designation of the order appealed from and designation of the appellant and appellee. Notwithstanding that such information is required by statute, courts have held that the inclusion of such in the notice of appeal is not a jurisdictional prerequisite, and the failure to comply with such statutory prescriptions does not defeat an appeal, as the notice of appeal may be amended "for good cause shown." (emphasis added) Moore, 11 Ohio App.3d at 275, 465 N.E.2d at 484.

The Court of Appeals in Potters Medical Ctr., Inc. v. Ohio Dept. of Ins., 62 Ohio App. 3d 476, 481, 575 N.E.2d 1224, 1227 (1989) followed the reasoning of the Moore court and also favored amending inadequate notices of

appeal, rather than dismissing such inadequate notices. In Potters, the Court stated that Ohio Revised Code Chapter 2505 contained two applicable provisions for such amendments. Id.

> R.C. 2505.04 provides that the only jurisdictional requirement necessary to perfect an appeal is the timely filing of a notice. R.C. 2505.05 allows a notice of appeal to be modified at the discretion of the court once the appeal has been timely perfected. These statutes provide an adequate basis for the common pleas court to grant a motion to amend.

Potters, 62 Ohio App.3d at 481, 575 N.E.2d at 1277.

In Trotwood Trailers, Inc. v. Evatt, 142 Ohio St. 197, 200, 51 N.E.2d 645, 647 (1943)(affirming 25 O.O. 449 (BTA)), the Ohio Supreme Court considered the jurisdictional sufficiency of a notice of appeal. The Court determined that the general appeal statutes, GC Sections 12223-1 to 12223-5 (Ohio Rev. Code § 2505.01 to § 2505.05), which provide for appeals from administrative agency findings, and GC Section 5611 (Ohio Rev. Code § 5717.02), which provides for appeals from tax commissioner findings, "are in pari materia and, if possible, their provisions should be reconciled." 142 Ohio St. at 201, 51 N.E.2d at 647. Because Ohio Rev. Code Chapter 5717 is silent as to the modification or amendment of notices of appeal, and because the provisions of Chapter 2505 are not contradictory, the pertinent general

provisions of Chapter 2505 should apply to the instant matter.

The Magistrate's sole reliance upon the authority of Huber Heights v. Carne (1996) 74 Ohio St.3d 306, 658 N.E.2d 744 (1996), is in error, as the instant case can be distinguished from Huber on three major points.

First, in Huber, the appellant failed to identify any board of education prior to the expiration of the thirty-day appeal period, 74 Ohio St.3d at 306, 658 N.E.2d at 744, whereas in the instant matter, Appellant filed a Notice of Appeal attempting in good faith to comply with the provisions of Ohio Rev. Code § 5717.05 but inadvertently named the Cincinnati School District as appellee. Appellant's error in misdesignating the proper school district was promptly corrected by the filing

of the Appellant's Amended Notice of Appeal.[3]

Second, in Huber, it was the board of education which failed to receive notice of the appeal, and which filed a motion to dismiss. 74 Ohio St.3d at 306, 658 N.E.2d at 744. In the instant matter, Northwest Local School District has failed to even make an appearance and submitted its own appraisal, supra, for only $11,000,000.

Finally and most importantly, the appellant in the instant matter promptly filed an Amended Notice of Appeal in which the

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2. Appellant's belief that its initial Notice of Appeal was proper and identified all appropriate parties was reinforced by the fact that upon service of the Notice, the Cincinnati School District filed a notice of appearance.

proper parties were included, unlike the situation in Huber, where no such Amended Notice was filed. Huber therefore contains no precedent affecting the statutory authority or equitable jurisdiction of the Common Pleas Court to exercise its discretion and allow the amendment of Appellant's timely filed Notice of Appeal.

To argue that the amendment of a notice of appeal is contrary to law flies in the face of applicable provisions of Ohio Revised Code Chapter 2505 and of Rule 3 of the Rules of Appellate Procedure, which expressly provides that the courts of appeals may, within their discretion, and upon terms that are just, allow the amendment of a timely filed notice of appeal. Ohio R. App. P. 3. Further, such an argument is inconsistent with Ohio Civ. R. 15, which allows for the amendment of

pleadings for just cause and provides for the relation back of the amendment to the date of the filing of the initial pleading. Ohio R. Civ. P. 15. The foregoing statutes and principles should not be disregarded in the consideration of the Appellee's Motions to Dismiss.

There has been no prejudice or harm occasioned by the Appellant's initial misdesignation of the appropriate school board in its original Notice of Appeal, where the Notice was promptly amended and served upon all parties to the underlying proceeding, and the Northwest Local School District Board of Education's own appraisal is less than the value Appellant requested the court find.

See also Clermont National Bank v. Edwards, 27 Ohio App.2d 91, 273 N.E.2d 783 (1970), and Reserve Building Association v.

McCormack, 102 Ohio App.3d 684, 657 N.E.2d 835 (1995).

IV. CONCLUSION

We urge this Court to reverse the findings of the Trial Court and remand the case to the Trial Court with instructions to try the underlying appeal from the Board of Revision of Hamilton County on its merits under the First Amended Notice of Appeal.

Respectfully submitted,

By: s/s _____
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Appellant Colerain Hills
Investment Company

CERTIFICATION

I hereby certify that a copy of this document was served upon each party or the attorney of record in the proceeding for each by ordinary U.S. Mail on the ____ day of February, 1997.

s/s
Irving Harris, Esq.

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COLERAIN HILLS INVESTMENT CO.	:	Case No.A96-01045
Plaintiff,	:	Judge: Nurre
vs.	:	
BOARD OF REVISION OF HAMILTON COUNTY, OHIO, et al.	:	MAGISTRATE'S DECISION
Defendants	:	

RENDERED THIS 21 DAY OF MAY, 1996.

This matter came to be heard on the Motion to Dismiss filed by Appellee, Hamilton County, Auditor. The basis for the appellee's motion is that the Appellant erroneously named the Cincinnati City School District as an appellee. The proper appellee is the Northwest Local School District.

Based upon the authority of *Huber Heights Circuit Courts, Ltd. v. Carne,*

Treasurer, (1996), 74 Ohio St:3d 306, this court finds that the requirements of O.R.C. §5717/05 are jurisdictional and as such the failure to have properly named the Northwest Local School District as an appellee cannot be cured.

The Motion to Dismiss is granted.

s/s

RICHARD A. BERNAT

MAGISTRATE, COURT

OF COMMON PLEAS

Copies sent by Clerk of Courts to:

Irving Harris, Esq.

Thomas J. Scheve, Esq.

David C. DiMuzio, Esq.

William J. Ennis, Esq.

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the magistrate's decision.

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

COLERAIN HILLS INVESTMENT CO.	:	Case No.A96-01045
Appellant,	:	Judge: Nurre
vs.	:	
BOARD OF REVISION OF HAMILTON COUNTY,	:	FINAL JUDGMENT ENTRY AFFIRMING MAGISTRATE'S DECISION
Appellees	:	

This matter comes before the Court on the Appellant Colerain Hills Investment Co.'s Objections to the Magistrate's Decision which granted the Appellee Board of Revision of Hamilton County's Motion to Dismiss. The Court has considered the pleadings, arguments, case citations, and briefs of counsel.

The Court agrees with the Magistrate theat "the requirements of O.R.C. sec. 5717.05 are jurisdictional and as such the

failure to have properly name the Northwest Local School District as an appellee cannot be cured. The Magistrate's Decision granting the Motion to Dismiss is hereby affirmed, and this being a dispositive judgment, this case is hereby dismissed.

IT IS SO ORDERED.

S/S

Thomas J. Nurre, Judge

Copies Faxed To:

Irving Harris

Attorney for Appellant

Thomas J. Scheve

Attorney for Appellee

Ohio Revised Code Section 5717.01

An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, either in person or by certified mail, with the board of tax appeals and with the county board of revision. If notice of the appeal is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal

employee to whom the notice of appeal is presented shall be treated as the date of filing. Upon receipt of such notice of appeal such county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith. Such appeal may be heard by the board of tax appeals at its offices in Columbus or in the county where the property is listed for taxation, or the board of tax appeals may cause its examiners to

conduct such hearing and to report to it their findings for affirmation or rejection.

The board of tax appeals may order the appeal to be heard on the record and the evidence certified to it by the county board of revision, or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper.

Ohio Revised Code Section 5717.05

As an alternative to the appeal provided for in section 5717.01 of the Revised Code, an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation. The appeal shall be taken by the filing of a notice of appeal with the court and with the board within thirty

days after notice of the decision of the board is mailed as provided in section 5715.20 of the Revised Code. The county auditor and all parties to the proceeding before the board, other than the appellant filing the appeal in the court, shall be made appellees, and notice of the appeal shall be served upon them by certified mail unless waived. The prosecuting attorney shall represent the auditor in the appeal.

When the appeal has been perfected by the filing of the notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal.

Within thirty days after notice of appeal to the court has been filed with the county board of revision, the board shall certify to the court a transcript of the record of the proceedings of said board pertaining to the original complaint and all evidence offered in connection with that complaint.

The court may hear the appeal on the record and the evidence thus submitted, or it may hear and consider additional evidence. It shall determine the taxable value of the property whose valuation or assessment for taxation by the county board of revision is complained of, or if the complaint and appeal is against a discriminatory valuation, shall determine a valuation that shall correct the discrimination, and the court shall determine the liability of the property for assessment for taxation, if that question is in issue,

and shall certify its judgment to the auditor, who shall correct the tax list and duplicate as required by the judgment.

In correcting a discriminatory valuation, the court shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a per cent or amount that will cause the property to be listed and valued for taxation by an equal and uniform rule.

Any party to the appeal may appeal from the judgment of the court on the questions of law as in other cases.

HUBER HEIGHTS CIRCUIT COURTS, LTD.

Appellant,

v.

CARNE, Treasurer, et al, Appellees.

HUNTINGTON TRUST CO., NA, Appellant,

v.

CARNE, Treasurer, et al, Appellees.

D&F INVESTMENTS, Appellant,

v.

CARNE, Treasurer, et al, Appellees.

Case Nos. 94-1613, 94-1850

Supreme Court of Ohio

Submitted Oct. 24, 1995

Decided Jan. 17, 1996.

SYLLABUS

Parties appealed the county board of revision's dismissal of their real property valuation complaints. The Court of Common

Pleas, Montgomery County, dismissed, and further appeal was taken. The Court of Appeals, Young, J., 1994 WL 312960, affirmed, and entered order certifying conflict. The Supreme Court held that failure to serve notice to appeal on party to hearing before county board of revision warranted reversal, since statute prescribing appeal of tax matters was jurisdictional, not procedural, and had to be followed precisely.

Affirmed.

Allan J. Johnston, Jr. filed real property valuation complaints for Huber Heights Circuit Courts, Ltd., Huntington Trust Co., NA, and D & F Investments, appellants, with the Montgomery County Board of Revision ("BOR"), appellee. The Board of Education of the Huber Heights School District ("BOE"), appellee,

filed countercomplaints against all three complaints. At the BOR hearing, which Johnston attended, the BOE moved to dismiss the complaints because Johnston was not the proper person to file the complaints. The BOR agreed with the BOE and dismissed the complaints.

Appellants then appealed to the Common Pleas Court of Montgomery County under R.C. 5717.05. They did not name the BOE as an appellee or serve a copy of the notices of appeal on the BOE.

On learning of the appeals, the BOE moved to dismiss them because appellants had not joined the BOE as an appellee and had not served a copy of each notice of appeal on it under R.C. 5717.05. The court agreed with the BOE and dismissed the appeals.

Appellants then appealed these decisions to the Court of Appeals for Montgomery County. The appellate court agreed with the trial court that strict compliance with the statute was necessary and affirmed its judgment. Finding its judgment in conflict with the First District Court of Appeals in First Natl. Bank Ctr. Assoc. v. Hamilton Cty. Bd. of Revision (1990), 70 Ohio App.3d 46, 590 N.E.2d 387, the court of appeals entered an order certifying a conflict.

This cause is now before this court upon our determination that a conflict exists.

Rogers & Greenberg and Carl D. Sherrets, Dayton, for appellants.

Teaford, Rich, Coffman & Wheeler and Jeffrey A. Rich, Columbus, for appellee Huber Heights Board of Education.

PER CURIUM.

The appellate court certified the following question to us:

> "Are the requirements of R.C. 5717.05 that 'all parties to the proceedings before the board * * * shall be made appellees, and notice of the appeal shall be served upon them by certified mail unless waived' jurisdictional?"

We hold that these requirements are jurisdictional and affirm the court of appeals. R.C. 5717.05 states:

> "As an alternative to the appeal provided for in section 5717.01 of the Revised Code, an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name

the property is listed or sought to be listed for taxation. The appeal shall be taken by the filing of a notice of appeal with the court and with the board within thirty days after notice of the decision of the board is mailed as provided in section 5715.20 of the Revised Code. The county auditor and all parties to the proceeding before the board, other than the appellant filing the appeal in the court, shall be made appellees, and notice of the appeal shall be served upon them by certified mail unless waived. * * *"

Appellants contend that the statute sets forth procedural rules that they need not strictly follow. However, we read statutes prescribing how to appeal tax matters as

jurisdictional, not procedural; consequently, we read requirements of R.C. 5717.05 as jurisdictional.

"The right to appeal granted by R.C. 5705.37 is statutory, and an appellant must follow the statute." (Footnote omitted.) Cincinnati v. Budget Comm. of Hamilton Cty. (1988), 35 Ohio St.3d 252, 253, 520 N.E.2d 232, 234. In Bd. of Edn. of Mentor Exempted Village School Dist. v. Lake Cty. Bd. of Revision (1980), 61 Ohio St.2d 332, 15 O.O.3d 398, 401 N.E.2d 435, we affirmed the Board of Tax Appeals' dismissal of a notice of appeal because the appellant had not filed a copy of the notice of appeal with the Commissioner of Tax Equalization, a requirement since repealed. We ignored the commissioner's waiver of notice. At 334, 15 O.O.3d at 399, 401 N.E.2d at 436, we stated:

"In numerous decisions, including Clippard Instrument v. Lindley (1977), 50 Ohio St.2d 121 [4 O.O.3d 279, 363 N.E.2d 592], we have confirmed our opinion in American Restaurant & Lunch Co. v. Glandler (1946), 147 Ohio St. 147 [34 O.O. 8, 70 N.E.2d 93], which held, at pages 149-150 [34 O.O. at page 9, 70 N.E.2d at page 94], that '[t]hese requirements are specific and in terms that are mandatory. The very statute which authorizes the appeal prescribes the conditions and procedure under and by which such appeal may be perfected. Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.'"

R.C. 5717.05 sets forth who may appeal, how one appeals, whom the appellant names as appellees, and how the appellant serves appellees with the notice of the appeal. We read this statute as mandatory and jurisdictional. Since appellants did not follow the statute precisely, the court of common pleas correctly dismissed their appeals.

Accordingly, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., and DOUGLAS, RESNICK, FRANCIS E. SWEENEY, Sr., PFEIFER and COOK, JJ., concur.

WRIGHT, J., not participating.

Supreme Court, U.S.
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No. 97-1592

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1997

COLERAIN HILLS INVESTMENT, CO.
Petitioner,

v.

BOARD OF REVISION OF HAMILTON COUNTY, et al.
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENTS BOARD OF REVISION OF HAMILTON COUNTY AND DUSTY RHODES OF HAMILTON COUNTY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DOES THIS COURT HAVE JURISDICTION TO GRANT THE WITHIN PETITION FOR A WRIT OF CERTIORARI?

II. DID THE DISMISSAL OF PETITIONER'S STATE LAW ADMINISTRATIVE TAX APPEAL, DUE TO PETITIONER'S FAILURE TO FOLLOW STATE STATUTORY DIRECTIVES FOR PERFECTING SAID APPEAL, VIOLATE ANY FEDERALLY SECURED LEGAL OR CONSTITUTIONAL RIGHT OF PETITIONER?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner: COLERAIN HILLS INVESTMENT CO.

Respondents: BOARD OF REVISION OF HAMILTON COUNTY; NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION; DUSTY RHODES, AUDITOR OF HAMILTON COUNTY

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JURISDICTION

This case involves no question of federal law whatever. It arises merely from the dismissal of petitioner's state law appeal of its state law property tax liability, which appeal was taken in state court and was governed by state statute. The Petitioner's appeal was dismissed by both a Magistrate and later a Judge of the Hamilton County Court of Common Pleas due to petitioner's failure to comply with the relevant statutes governing such appeals. The dismissal was affirmed by the Hamilton County Court of Appeals, First Appellate District. The Supreme Court of Ohio declined to exercise jurisdiction of petitioner's appeal and denied review of the judgment of The Court of Appeals.

The considerations governing this Court's jurisdiction on a writ of certiorari are enumerated in Rule 10 of the Rules of the Supreme Court of the United States. That rule clearly states, in relevant part, "A petition for a writ of certiorari will only be granted for compelling reasons." In light of the considerations enumerated in Rule 10, this Court does not have jurisdiction to grant the within petition, and thus the petition must be denied. In addition, respondents state that there is no compelling reason for the petition to be granted.

STATEMENT OF THE CASE

This is a case in which the petitioner sought review of the value of its Hamilton County, Ohio real property which respondent Dusty Rhodes, the Hamilton County Auditor, had set at $11,704,000.

In Ohio, an independent Board, called the Board of Revision, which is comprised of the County Auditor, County Treasurer and President of the Board of County Commissioners, hears and decides complaints on real property tax appeals pursuant to Ohio Revised Code ("R.C.") 5715.05. (Contrary to Petitioner's assertion, no member of the Department of Taxation, which is a state administrative department, sits on the Board of Revision.)

At the hearing before the Board of Revision, three appraisers testified; one for the petitioner, one for respondent Rhodes, the Hamilton County Auditor, and one for respondent School Board. The petitioner's appraiser valued the property at $11,150,000 (which, contrary to Petitioner's assertion, did not suggest something "grossly overestimated" (Petition, p. 3)). The expert appraiser for respondent Rhodes appraised the property at $13,075,000. The Board of Revision found respondent Rhodes' appraiser more credible and essentially adopted his opinion of value. (Again, this is contrary to petitioner's assertion that the decision was not based on "evidence or logic" (petition, p. 3)).

The Petitioner, represented by counsel, then chose to appeal this decision to the Court of Common Pleas of Hamilton County pursuant to R.C. §5717.05. Petitioner could have chosen to appeal to another independent tribunal, the Ohio Board of Tax Appeals in Columbus, Ohio, pursuant to R.C. §5717.01. (Again, contrary to petitioner's assertion,

the Ohio Board of Tax Appeals (BTA) is not part of the executive branch of government (Petition, p. 15) and it is not part of the Ohio Department of Taxation (Petition, p.7).) The BTA is an independent quasi-judicial administrative tribunal.

In its appeal to the Court of Common Pleas, the petitioner failed to name all the necessary parties as specifically required by R.C. §5717.05. The Ohio Supreme Court has long held that because tax appeals are a special statutorily-created remedy, strict adherence to the statutory requirements is required.

In this case, the petitioner, represented by experienced counsel, unfortunately simply failed to follow precisely the clearly set-forth requirements of the statute, by failing to name the proper parties to the appeal.

As a result of petitioner's failure as petitioner correctly points out in his petition, a Magistrate of the Common Pleas Court dismissed the appeal and that decision was affirmed by a Judge of the Common Pleas Court and the Hamilton County Court of Appeals First Appellate District of the State of Ohio. The Supreme Court of Ohio declined to hear the case because it did not involve any substantial constitutional question.

ARGUMENT

ISSUE #1. THIS COURT DOES NOT HAVE JURISDICTION TO GRANT THE WITHIN PETITION FOR A WRIT OF CERTIORARI.

Rule 10 of the Rules of the Supreme Court of the United States provides, in relevant part, that "A petition for a writ of certiorari will be granted only for compelling reasons." Rule 10 goes on to enumerate the considerations governing review on certiorari, the only ones relevant to this proceeding being when:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with a decision of another state court of last resort or of a United States Court of Appeals; [or]
>
> (c) a state court or United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. (Emphasis added.)

In this case, the "state court of last resort" in Ohio, i.e., the Ohio Supreme Court, did not accept jurisdiction of petitioners' appeal, and thus did not decide anything. Even if this Court construes the term "court of last resort" to include the Hamilton County Court of Appeals, First Appellate District of Ohio, that court did not decide "an important

federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals". Indeed, this case presents no "federal question" whatever. Accordingly, this Court would not have jurisdiction over the within petition under consideration (b) of Rule 10.

Furthermore, the highest Ohio state court that has decided this case, i.e., the Hamilton County Court of Appeals, First Appellate District of Ohio, has neither "decided an important question of federal law that has not been, but should be, settled by this Court", nor has it "decided an important federal question in a way that conflicts with relevant decisions of this Court". This case presents no "question of federal law" at all. Thus, no jurisdiction would lie under consideration (c) of Rule 10.[1]

Additionally, there are no compelling reasons to grant the petition in this case. This case merely concerns a decision on a state law appeal from a County administrative tribunal in which the state Courts decided the petitioner failed to follow the clearly expressed state statutory directives. Thus, the case clearly does not present any federal question, much less "an important federal question."

Rule 10 of this Court's rules concludes by stating that "...A petition for writ of certiorari is rarely granted when the

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[1] The First Appellate District of Ohio is comprised solely of Hamilton County, Ohio. Thus, decisions of the Hamilton County Court of Appeals, First Appellate District of Ohio, are binding only in Hamilton County, Ohio. Ohio Constitution, Article IV, §3; **Linkensdorfer v. Wentzel**, 4 ONP 94, 6 O. Dec. 6; **Kings Powder Co. v. Thrasher**, 20 onp ns 401, 28 O.Dec. 356.

asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law..." And, the within petition, in effect, if not in so many words, asserts both.

Accordingly, respondents respectfully submit that this Court has no jurisdiction to grant the petition, and thus that the petition must be denied.

ISSUE #2. THE DISMISSAL OF PETITIONER'S STATE LAW ADMINISTRATIVE TAX APPEAL DUE TO PETITIONER'S FAILURE TO FOLLOW STATE STATUTORY OBJECTIVES FOR PERFECTING SAID APPEAL DID NOT VIOLATE ANY FEDERALLY SECURED LEGAL OR CONSTITUTIONAL RIGHT OF PETITIONER.

There is nothing particularly unusual about this case. The petitioner filed a complaint with the Hamilton County Board of Revision (BOR) to have its property reduced. The BOR conducted a full evidentiary hearing and, based in part on the appraisal and testimony of an independent real estate expert hired by respondent Rhodes, decided to increase the value of the property over its originally assessed value.

In Trebmal Constr. Inc. vs. Cuyahoga Cty. Bd. of Revision (1994) 94 Ohio App.3d 246, 640 N.E.2d 601 the Cuyahoga County Court of Appeals dealt with a claim similar to that presented here that such a dismissal violated the United States Constitution. The Court said the following at page 254:

> With regard to the remaining claims that dismissal violated the property owner's constitutional rights, we note that a litigant has no inherent right to appeal a tax determination, only a statutory right. Cooke vs. Kinney (19981), 65 Ohio St.2d 7, 8, 417 N.E.2d 106, 107-108. Further, although Trebmal and Fuchs assert that they were denied their constitutional rights of due process, this court in 75 Pub Square rejected the property owners' claim that R.C. 5715.05 creates an "impermissible race to the courthouse" in violation of the Due Process Clauses of the Ohio and United States Constitutions. Trebmal and Fuchs further assert that the BTA's dismissal has deprived them of their constitutional right to uniformity and equality of assessment. We find, however, that Trebmal's and Fuch's appeals failed because the owners of property were unwilling to submit to exclusive appellate jurisdiction in conformance with the statutory options under R.C. Chapter 5717, rather than because of any constitutionally defective provision of R.C. 5717.05. (Emphasis added)

In this case, the dismissal of the action was caused by the Petitioner's failure to correctly follow the statutory guidelines of the forum it voluntarily chose, rather than any constitutionally defective provision.

In Huber Hts. Circuit Courts, Ltd. v. Carne (1996) 74 Ohio St.3d 306, 658 N.E.2d 744, The Ohio Supreme Court held as follows at page 308:

> R.C. 5717.05 set forth who may appeal, how one appeals, whom the appellant names as appellees, and how the appellant serves appellees with notice of the appeal. We read this statute as mandatory and jurisdictional. Since appellants did not follow the statute precisely, the court of common please correctly dismissed their appeal. (Emphasis added.)

Clearly, the dismissal of the subject appeal was the result of the Petitioner failing to "submit to exclusive appellate jurisdiction in conformance with the statutory options."

In this case the Petitioner chose to appeal the case to the Court of Common Pleas, but neglected to name a necessary party. The Trial Court thus dismissed the appeal and the Court of Appeals affirmed on the basis of the Supreme Court's holding in Huber Hts., supra (1996) 74 Ohio St.3d 306, 658 N.E.2d 744.

The Ohio Supreme Court has long recognized that appeals from administrative boards are creatures of statute and strict compliance must be had. This is not a constitutional question, but rather a question of whether the failure to comply with a statutorily-created mandate warrants dismissal.

Petitioner had a choice of appealing the decision for a de novo hearing either before the Ohio Board of Tax Appeals or the Court of Common Pleas. Either remedy is strictly statutorily created and each has its advantages and disadvantages.

Among these are the following:

1) The BTA generally only hears cases in Columbus, so cost and travel time become a factor.

2) There is no filing fee for filing an appeal with the BTA. There is a filing fee in Common Pleas.

3) The BTA is not strictly bound by the Ohio Rules of Evidence as is the Court of Common Pleas. See Orange City School District Bd. of Education vs. Cuyahoga BOR (1996) 74 Ohio St.3d 415, 659 N.E.2d 1223.

4) The Standard of Review on appeal from the BTA is a showing of unlawful and unreasonable (R.C. §5717.04), whereas "against the manifest weight of the evidence" would suffice on an appeal from the Trial Court's decision.

5) There is a right of direct appeal to the Ohio Supreme Court from a decision of the BTA (R.C. §5717.04). An appeal from the Court of Common Pleas must just be taken to the Court of Appeals.

In this case the petitioner made a conscious strategic decision to appeal its case to the Court of Common Pleas rather than the BTA. Each avenue has its own precise guidelines. This case was dismissed because the petitioner failed to follow the express "mandatory and jurisdictional"

requirements of the statute under which it chose to appeal.

The mere fact that certain statutory remedies have certain disadvantages (as well as advantages) over other remedies does not deny equal protection of the laws, when one is free to voluntarily choose one statutory remedy over another for whatever strategic reason.

CONCLUSION

Based upon all of the foregoing, respondents pray that petitioner's within petition for a Writ of Certiorari be denied, in its entirety, at petitioner's cost and expense.

Respectfully submitted,
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No. 97-1592

In the
Supreme Court of the United States
October Term, 1997

COLERAIN HILLS INVESTMENT CO.,

Petitioner,

v.

BOARD OF REVISION OF HAMILTON COUNTY; NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION; DUSTY RHODES, AUDITOR OF HAMILTON COUNTY,

Respondents.

ON MEMORANDUM OF JURISDICTION
TO THE OHIO SUPREME COURT

REPLY BRIEF OF PETITIONERS TO RESPONDENTS BOARD OF REVISION AND DUSTY RHODES BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether this Court has jurisdiction to grant the within Petition for Certiorari.

II. Whether Ohio Revised Code §5717.05 violates the Equal Protection and Due Process Clauses of the United States Constitution.

PARTIES TO THE PROCEEDING

1) COLERAIN HILLS INVESTMENT CO.

2) BOARD OF REVISION OF HAMILTON COUNTY

3) NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION

4) DUSTY RHODES, AUDITOR OF HAMILTON COUNTY

5) BETTY MONTGOMERY, OHIO ATTORNEY GENERAL (pursuant to 28 U.S.C. §2403(b), which may be applicable in that this appeal questions the constitutionality of Ohio Revised Code §5717.05)

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Statement of the Case

In the present case, the Petitioner sought review of the Hamilton County Auditor's 1993 appraisal of its real property by the Hamilton County Board of Revision ("BOR"). The Auditor had estimated the value of Petitioner's property at $11,704,000.00, which amount Petitioners contested. The BOR, however, increased the valuation to $13,075,00.00, an excessive amount, especially given the fact that the Court of Common Pleas in 1996 ruled that the same property was worth $11,900,000.00.

The Petitioner thereafter decided to appeal the decision by the BOR. Rather than choosing the administrative route of appeals via the Board of Tax Appeals ("BTA"), the Petitioner instead chose to appeal directly to the Hamilton County Court of Common Pleas, in accordance with Ohio Revised Code § 5717.05. These two forums for appeal are considered alternatives to each other, each involving slightly different considerations. According to O.R.C. §§ 5717.01 and 5717.05, however, Notices of Appeal to both

forums must include the local school district as a party to the proceedings.

Unfortunately, the Petitioner named the incorrect school district in its Notice of Appeal, which error the Petitioner subsequently sought to amend. The Court of Common Pleas refused to allow the amendment and dismissed the case, stating that the Ohio Supreme Court in Huber Heights Circuit Courts, Ltd. v. Carne, et al.,74 Ohio St.3d 306, 658 N.E.2d 744,(1996) held that failure to name the proper school district under O.R.C. § 5717.05 was a jurisdictional defect that was incapable of cure.

The alternative forum for appeal, the Board of Tax Appeals, however, does not make the naming of any school board a jurisdictional requirement. Accordingly, appellants choosing the administrative route of appeals do not risk dismissal of their appeal merely for a minor error in pleading. Petitioners appealed the decision by the Court of Common Pleas to the Court of Appeals, who were bound to affirm the

lower court's decision due to the Huber precedent. The Petitioner then appealed to the Ohio Supreme Court on constitutional grounds; Specifically, Petitioners argued that Ohio Revised Code §5717.05 deprives people of judicial review due to minor procedural defects in pleading, in violation of the Due Process clause, and that it treats similarly-situated taxpayers differently for no logical reason based solely on the appeal forum chosen, in violation of the Equal Protection Clause.

The Ohio Supreme Court, however, which had not considered the constitutional issues in Huber, refused to overrule the Huber decision and thus dismissed the appeal as one not involving a substantial constitutional question.

Petitioners now seek a Writ of Certiorari from this Court to consider the important constitutional issues raised in its Petition and to determine whether Ohio Revised Code Section 5717.05 violates the Due Process and Equal Protection Clauses of the United States Constitution.

ARGUMENT

1: Issue: This Court has jurisdiction to Grant this Petition for Writ of Certiorari

Colerain Hills Investment Company petitions this Court for a Writ of Certiorari pursuant to Rule 10(c), which states that a writ is appropriate where:

> (c) a state court or United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decision of this Court.

In the present case, Petitioner asks this Court to decide an important question of Federal law that the Court has not yet considered; Whether Ohio Revised Code §5717.05 violates the Due Process and Equal Protection Clauses of the United States Constitution. Thus, this Court has jurisdiction to grant the current Petition.

While Respondents may disagree as to whether the statute is indeed unconstitutional,

they certainly cannot disagree that questions regarding the constitutionality of state actions are "important questions of Federal Law", and thus within the jurisdiction of this Court. Respondents also claim that Petitioner's case does not present "compelling" reasons for granting the Petition because it "merely concerns a decision on a state law appeal from a County administrative tribunal." Such an argument completely ignores the fact that every Ohio property owner has an interest in O.R.C. § 5717.05. The statute's unconstitutional provisions threaten each and every one of these individuals, and may affect their ability to obtain judicial review of an erroneous tax appraisal. These are compelling reasons to grant the Petition, and raise important Federal issues. Accordingly, the Petitioner respectfully submits that this Court has jurisdiction under Rule 10 to grant the Petition for Writ of Certiorari.

ISSUE 2: The Petitioner's Constitutional rights to Due Process and Equal Protection of the Law were violated by Ohio Revised Code §5717.05.

Ohio Revised Code Section 5717.05 violates the Due Process Clause of the United States Constitution because it fails to provide taxpayers with the proper procedural safeguards before depriving them of their property. The decisions by the Hamilton County BOR, like all judicial decisions of administrative agencies, must be able to be reviewed by a court of law. Clermont National Bank v. Edwards, 27 Ohio App.2d 91, 102, 273 N.E.2d 783, 789 (1970)(Quasi-judicial decisions and orders of administrative officers and agencies require review). The Petitioner was completely denied the opportunity to have judicial review of the BOR's decision, due to a minor defect in pleading which it promptly attempted to correct. The taxpayer has a strong private interest in the neutral, judicial review of county tax evaluations, and the state's interest in precluding judicial review for technical errors

in pleading is minimal. Therefore, procedural due process demands that Appellant be afforded an opportunity for judicial review pursuant to O.R.C. §5717.05, despite Appellant's failure to name the proper school board as a party to the action. Section 5717.05 violates the Equal Protection clause of the Fourteenth Amendment as well, because it treats similarly-situated people in a different manner. While a state government may create classes of individuals for whom certain laws and rights may apply, if the classifications are baseless and if there is no reason for the differing treatment, the classification violates the equal protection clause of the Fourteenth Amendment. See, e.g. Hartford, Supra; See also, generally Sutton v. Mt. Sinai Medical Center, 102 Ohio App. 3d 641, 657 N.E. 2d 808(1995).

In the present case, O.R.C. §5717.05 creates a two-part classification of persons seeking review of decisions by the BOR based forum-selection. Individuals choosing the O.R.C. § 5717.01 appeals route may have their

appeal heard despite errors in pleading, while individuals choosing the O.R.C. § 5717.05 route of appeals will have the appeal dismissed for failure to join the proper school board as a party. The forum-selection classification discriminates against those appellants choosing the court of common pleas to review the decision by the BOR, and the differing treatment serves no important or even legitimate state purpose. Therefore O.R.C. § 5717.05 violates the Equal Protection Clause of the U.S. Constitution.

Respondents' reliance on Trembal Construction, Inc. v. Cuyahoga County Board of Revision, 94 Ohio Ap..3d 246, 640 N.E.2d 601 (1994) to support its argument is misplaced. The case in Trembal differs greatly from the present one. Trembal involved a dispute over the provision of O.R.C. § 5717.05 which states that "the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal." Id. at 252, 605; O.R.C. §5717.05. The case did not involve the present dispute over pleading requirements.

Further, the Petitioners in Trembal suffered a dismissal of their appeal because they *ignored* or *renounced* the law, not because they unintentionally made a technical error in seeking their appeal. Id. The Petitioners in Trembal knew that their opponents had filed an appeal with the BTA and that the BTA therefore had jurisdiction over the appeal, but the Petitioners filed a notice of appeal with the court of common pleas anyway. Id. "In short, the landowners chose to fight the law rather than follow the law ..." Id. at 253, 606.

This is not the case before the Court today. In the present case, Petitioners accidentally failed to comply with the requirements of O.R.C. §5717.05, and immediately sought to amend their Notice of Appeal to comply with the statute. Petitioner's appeal did not fail because Petitioners were "unwilling" to comply with O.R.C. §5717.05. See Id. at 254, 607. Rather, Petitioner's appeal failed due to the constitutionally defective provision of O.R.C. §5717.05.

IV. CONCLUSION

We urge this Court to find Ohio Revised Code §5717.05 unconstitutional, in violation of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and to thereby reverse the findings of the Trial Court and remand the case to the Trial Court with instructions to try the underlying appeal from the Board of Revision of Hamilton County on its merits under the First Amended Notice of Appeal.

Respectfully
submitted,

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